

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

BERNHARDT TIEDE, II,

Plaintiffs,

v.

BRIAN COLLIER, et al.

Defendants.

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Civil Action No.
1:23-CV-1004-RP

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS TEXAS
DEPARTMENT OF CRIMINAL JUSTICE AND BRYAN COLLIER'S MOTION TO
DISMISS**

Exhibit 5

**Excerpts from Hearing Testimony of TDCJ Division
Director Cody Ginsel**

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 KEITH COLE, ET AL * 4:14-CV-01698
5 VS. * 10:09 A.M.
6 BRYAN COLLIER, ET AL * JUNE 23, 2017

7 INJUNCTION HEARING
8 BEFORE THE HONORABLE KEITH P. ELLISON
9 Day 5 of 9 Days

10 **APPEARANCES:**

11 **FOR THE PLAINTIFFS:**

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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

DAY 5
(Injunction Hearing)

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CODY GINSEL

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1 having been first duly sworn, testified as follows:

2 **DIRECT EXAMINATION**

3 BY MS. O'LEARY:

12:30:39

4 **Q.** Good morning. Will you please state your name for the
5 record.

6 **A.** It's Cody Ginsel. C-o-d-y, G-i-n-s-e-l.

7 **Q.** And what is your current job title?

8 **A.** I'm the division director for the Private Facilities
9 Contract Monitoring Oversight Division.

12:30:52

10 **Q.** And what was your position prior to that one?

11 **A.** I was deputy director over Management Operations in
12 the Correctional Institutions Division.

13 **Q.** How long have you worked in corrections?

12:31:10

14 **A.** September 6th will be 29 full years. So right at
15 29 years.

16 **Q.** So if you had to explain to Judge Ellison in a few
17 sentences what your job is, what would you say?

12:31:30

18 **A.** Well, my current job is to provide oversight for our
19 contracted facilities in the Private Division Section. We
20 have secure private facilities.

12:31:52

21 I also oversee halfway houses, treatment transition
22 centers. That involves about -- quite a bit of
23 contractual review and ensuring the rules and regulations
24 in all those facilities are followed in accordance with
25 the contract.

1 Q. And even though you do private facilities and halfway
2 houses now, do you have a lot of knowledge about CID?

3 A. That's correct.

4 Q. What does "CID" stand for, for the record?

12:32:05

5 A. That's our Correctional Institutions Division.

6 Q. When you are thinking about developing rules and
7 procedures for, we'll say CID to limit it, what are the
8 most important factors that you would think about?

12:32:23

9 A. Well, the safety of the offenders and the safety of
10 the staff, also the public.

11 Q. Do you think offender behavior is an important factor
12 when you are deciding what rules and policies should be in
13 place?

14 A. Yes.

12:32:36

15 Q. And based on your experience, do you have knowledge
16 about typical offender behavior?

17 A. I do through -- through experience, yes.

18 Q. Let's talk about some of those typical behaviors. How
19 many years in your career did you spend as a warden or
20 assistant warden?

12:33:00

21 A. 13 years.

22 Q. How would you describe the relationship between a
23 warden and the offenders that live at his unit?

12:33:15

24 A. Well, it should be one of trust. It should be one of
25 open communication where the warden could walk and have

1 MR. EDWARDS: No. As long as we can incorporate
2 her prior testimony as the Court ordered previously. Oh,
3 we may have some rebuttal testimony from inmates; but that
4 would be at the close of evidence.

03:57:47

5 MR. JAMES: We just -- we just figured out the
6 names of inmates. We haven't conferred with opposing
7 counsel, but we'll submit writs.

8 THE COURT: Okay. That is fine. Thank you.

9 (Proceedings concluded at 3:57 p.m. and continued on
10 Day 6.)

11 *Date: July 27, 2017*

12 ***COURT REPORTER'S CERTIFICATE***

13 *I, Laura Wells, certify that the foregoing is a*
14 *correct transcript from the record of proceedings in the*
15 *above-entitled matter.*

16
17 /s/ Laura Wells

18 *Laura Wells, CRR, RMR*

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 KEITH COLE, ET AL * 4:14-CV-01698
5 VS. * 9:17 A.M.
6 BRYAN COLLIER, ET AL * JUNE 26, 2017

7 INJUNCTION HEARING
8 BEFORE THE HONORABLE KEITH P. ELLISON
9 Day 6 of 9 Days

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APPEARANCES (continued)

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DAY 6
(Injunction Hearing)

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DEFENDANTS' EXHIBITS

EXHIBIT NUMBER	OFFERED	ADMITTED
Defendants' Exhibit Number 88	1350	1350
Defendants' Exhibit Number 109	1156	1156
Defendants' Exhibit Number 139	1347	1347

1 **PROCEEDINGS**

2 THE COURT: Thank you. Please be seated. Okay.
3 Shall we resume?

4 MS. O'LEARY: Yes, Your Honor.

09:17:34 5 THE COURT: Okay. Do you want to take your
6 position. You may inquire.

7 **CODY GINSEL,**

8 having been previously duly sworn, testified as follows:

9 **DIRECT EXAMINATION (continued)**

09:17:35 10 BY MS. O'LEARY:

11 **Q.** Good morning, Mr. Ginsel.

12 **A.** Good morning.

13 **Q.** Let's try to pick up where we left off. Let's talk
14 about the heat-related illnesses at the Pack Unit. Are
09:18:02 15 you familiar with the incidents from last summer?

16 **A.** I am.

17 **Q.** Okay. Has the Pack Unit housed geriatric offenders
18 for a long time?

19 **A.** Well, we've housed Type I geriatric offenders, yes.
09:18:18 20 For the time period, I don't know; but I know we have
21 housed them at the Pack Unit.

22 **Q.** Has it been more than five years?

23 **A.** Yes.

24 **Q.** Okay. Has the Pack Unit housed offenders with chronic
09:18:28 25 care needs for a long time?

1 well; but those offenders must be doing a term of less
2 than 40 years because we have a single fence at our state
3 jails versus a prison that has a double fence, double
4 wire. It's not designed for those offenders that are
5 doing long-term sentences. It's not structurally designed
6 for that.

7 **Q.** Okay. Let's talk about some charts.

8 MS. O'LEARY: Will you show me
9 Exhibit -- Defendants' Exhibit 109, please.

10 **Q.** (By Ms. O'Leary) Now, what is this document,
11 Mr. Ginsel?

12 **A.** This was a document created by Executive Services
13 which lists our beds within TDCJ. It lists our
14 segregation beds, our treatment beds, which would be our
15 substance abuse, DWI, SAFFP, IPTC beds, also includes some
16 of our medical beds and then shows the general population
17 beds with AC.

18 MS. O'LEARY: Would you please scroll down to, I
19 think, the last page where the total is listed. There we
20 go. Okay.

21 **Q.** (By Ms. O'Leary) What is -- what is this telling us
22 at the bottom of the page? What information is there?

23 **A.** This is telling us we have 28 facilities that
24 are -- that are all air-conditioned.

25 **Q.** Okay.

1 Type III.

2 **Q.** But if not, no such effort is made, correct?

3 **A.** No. We use our mitigation measures that are in place.

10:21:49

4 **Q.** Do you -- okay. If not, if there isn't a designation
5 of medical, no such matching process takes place.

6 Instead, you rely on your mitigation measures, right?

7 **A.** Well, I guess -- I think I'm answering you. So what
8 I'm telling you is that the medical provider evaluates the
9 offender. If he determines the offender needs that

10:22:08

10 particular bed because they are -- for a variety of
11 reasons, regional medical facility or geriatric-type bed
12 that would need air-condition, then yes. But other than
13 that, I'm not aware of any.

14 **Q.** Yeah. There is no document in place at TDCJ -- and,
15 like, when I say "document," do you understand what I
16 mean, sir?

10:22:22

17 **A.** I understand what a document is.

18 **Q.** What is a document, sir?

19 **A.** Something in writing.

10:22:28

20 **Q.** Something in writing. There is nothing in writing at
21 all that matches inmates who are heat impaired with
22 potential air-conditioned beds, correct, that you can
23 point me to and actually tell me something of substance
24 beyond your word?

10:22:44

25 **A.** Not that I can point you to; but that's outside of my

1 realm, too. I mean, medical may have that; but I'm not
2 aware of that.

3 **Q.** You are one of the most senior people at the Texas
4 Department of Criminal Justice, right?

10:22:58

5 **A.** I am.

6 **Q.** And you are here to testify on behalf of the agency,
7 correct?

8 **A.** That's correct.

10:23:04

9 **Q.** You have given multiple depositions on behalf of the
10 agency as a corporate witness, correct?

11 **A.** That's correct.

12 **Q.** You gave a deposition in December of 2016, correct?

13 **A.** That's correct.

10:23:20

14 **Q.** I asked you, "Has anyone, to your knowledge, ever
15 looked at the question of whether or not people taking
16 antipsychotic medications could be housed at other
17 facilities in TDCJ?"

18 Do you recall what your answer was?

19 **A.** That was six months ago. No, sir.

10:23:32

20 **Q.** You stated, "That would be pure speculation." Do you
21 recall that?

22 **A.** No, sir. I don't recall saying that.

23 **Q.** You don't recall saying that?

24 **MR. EDWARDS:** May I approach, Your Honor?

10:23:53

25 **THE COURT:** You may.

1 Q. (By Mr. Edwards) "QUESTION: Has anyone, to your
2 knowledge, ever looked at the question of whether or not
3 people taking antipsychotic medications could be housed in
4 other facilities in TDCJ?

10:24:09 5 "ANSWER: Yeah. It would be -- that would just be
6 pure speculation on my part whether or not somebody has
7 looked at that or not."

8 Did I read that correctly?

9 A. You read it correctly.

10:24:19 10 Q. So as of December 2016 the -- one of the highest
11 people in TDCJ told me or told my clients it would be pure
12 speculation on my part to see if we have ever evaluated
13 the question of whether or not people on antipsychotic
14 medications could be placed in air-conditioned housing
10:24:38 15 areas, correct?

16 A. That would be correct.

17 Q. Okay. Now, that survey that Ms. O'Leary put on the
18 board. Do you recall that?

19 A. I do.

10:24:57 20 Q. That stemmed from an initial inquiry in 2012 and 2013;
21 isn't that correct?

22 A. I believe so. That's correct.

23 Q. Okay. That inquiry was started not because anybody at
24 TDCJ cared about an analysis. It was started because the
10:25:13 25 media asked for it, right?

1 **A.** I don't believe it was totally --

2 MS. O'LEARY: Objection. Argumentative. He
3 can't testify that TDCJ cares or does not care about
4 something.

10:25:23

5 MR. EDWARDS: This man can.

6 THE COURT: Well, just -- just pare that off and
7 go to the question. Was that inquiry undertaken because
8 the media inquired?

9 THE WITNESS: That was part of it, yes, sir.

10:25:41

10 THE COURT: Okay.

11 **Q.** (By Mr. Edwards) And just so we're clear, *The New*
12 *York Times* asked how much air-conditioned space you had;
13 and you guys went out and found out, right?

14 **A.** Oh, I don't know who exactly requested that.

10:25:51

15 **Q.** Do you recall stating that the document was carried
16 over to 2013 and not completed in 2012?

17 **A.** I do.

18 **Q.** And do you recall that you stated you had a media
19 request?

10:26:03

20 **A.** I do.

21 **Q.** And that that is when it was finalized?

22 **A.** Right. I just don't know if it was *New York Times*. I
23 just --

24 **Q.** Fair enough. And at that point in 2013, you didn't

10:26:15

25 analyze the actual amount -- you didn't do any sort of

1 analysis as to whether or not an actual placement could
2 occur, right?

3 **A.** Well, once again, we don't look at it as a whole. We
4 look at it systemwide as a whole, placement of beds on
5 every move.

10:26:30

6 **Q.** Sir, in 2013 did you analyze -- did you go through the
7 analysis that you just went through with Ms. O'Leary?

8 **A.** I can't recall if we did or not. I mean, I can't say
9 here today if we did or not. I know that we put those

10:26:44

10 beds together saying this is our air-conditioned beds that
11 we have available. We do -- we look at every offender
12 individually as they are placed on a particular -- but
13 systemwide as a whole, 150,000 plus offenders.

14 **Q.** Sir, on the initial chart was there a category for
15 general population beds that inmates could be placed in?

10:27:03

16 **A.** Yes. Not that I remember. I would have to go back
17 and look at it.

18 **Q.** Let's go back and look at it.

19 **A.** I think, now that I recall, it was just unit based.

10:27:20

20 We just put units --

21 **Q.** Let's go back and look at it, sir.

22 **A.** Okay. All right.

23 **Q.** This is Plaintiffs' Exhibit 62.

24 **A.** Okay.

10:27:28

25 **Q.** Is there a number for general population beds on that

1 Q. Do you know what his number was?

2 A. I don't know what his number was.

3 Q. It was about 150 less than yours, sir.

4 A. Was it?

04:12:36

5 MR. EDWARDS: Yeah. Nothing further, Your Honor.

6 MS. O'LEARY: We have no further questions for
7 this witness, Your Honor.

8 THE COURT: Okay. We'll adjourn for the day.
9 Thank you. 9:00 tomorrow.

04:13:20

10 (Proceedings concluded at 4:13 p.m. and continued on
11 Day 7.)

12 *Date: July 27, 2017*

13 ***COURT REPORTER'S CERTIFICATE***

14 *I, Laura Wells, certify that the foregoing is a*
15 *correct transcript from the record of proceedings in the*
16 *above-entitled matter.*

17

18 /s/ Laura Wells

19 *Laura Wells, CRR, RMR*

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